IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8368 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHELABHAI BABUBHAI SOLANKI

Versus

MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD

Appearance:

1. Special Civil Application No. 8368 of 1999

MR HARDIK C RAWAL for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/08/2004

ORAL JUDGEMENT

1. The petitioner by way of this petition has

approached this Court for appropriate writ, order or direction, quashing and setting aside the order of the respondent Corporation passed at Annexure-A dated 20-3-1999, pursuant to the order of the Division Bench passed in Special Civil Application No. 2279 of 1991 dated 11-2-1998, whereby claim of the petitioner was rejected.

2.1 Mr. Hardik Rawal, learned advocate for the petitioner has submitted that the petitioner was originally appointed as Typist in Sardarnagar Municipality w.e.f. 22-7-1978. Petitioner was permanently appointed as Typist-Clerk in the said Municipality vide order dated 2-7-1979 in the pay scale of Rs.260-400. On 18-12-1980 petitioner was appointed as Accountant Clerk and was promoted to the post of Rent Collector w.e.f. 5-8-1981. Subsequently w.e.f. 24-8-1982 petitioner was again posted as Accountant Clerk by the Municipality and thereafter again he was posted as Rent Collector w.e.f. 14-2-1983 in Sardarnagar Division of the municipality, and in May 1983 petitioner was transferred as Rent Collector in Kubernagar Part-I area. It is the claim of the petitioner that from 5-3-1984 to 26-4-1984 he held additional charge as Shop Inspector. In the meantime i.e. on 1-11-1980 petitioner was confirmed in service of the municipality.

2.2 It is further submitted that the petitioner was suspended from service by order dated 30-10-1984 in his alleged involvement in a trap case lodged by Anti Corruption Bureau.

3.1 It is contended that as the limits of Ahmedabad Municipal Corporation was extended and Sardarnagar Municipality was accordingly dissolved and the said area came to be merged in Ahmedabad Municipal Corporation, services of all the employes of Sardarnagar Municipality, as per the order of the Government, came to be transferred to Ahmedabad Municipal Corporation and vide order dated 19-6-1986 services of the petitioner also came to be transferred to Ahmedabad Municipal Corporation. As the petitioner was under suspension at the relevant time, i.e. when the change of administration took place, petitioner was entitled to subsistence allowance at the rate of 75 %.

3.2 It is further submitted that the petitioner was acquitted in the criminal case lodged against him and the suspension came to be revoked and the petitioner was taken back on duty vide order dated 13-10-1988. Vide order dated 8-2-1989 petitioner was absorbed as Junior

Clerk in Estate Department of Ahmedabad Municipal Corporation in the pay scale of Rs.950-1500. Thereafter from 29th July 1989 petitioner was asked to work as Estate Rent A/1 Section as Rent Clerk and from 2-2-1991 petitioner is continuing on the said post.

3.3 It is the case of the petitioner that when Sardarnagar Municipality was in existence and before it merged in Ahmedabad Municipal Corporation, a settlement under Section 2-P of the Industrial Disputes Act was arrived between President of Sardarnagar Municipality, General Secretary of Sardarnagar Municipality Karmachari Mandal and General Secretary of Gujarat Rajya Shramjivi Karmachari Union. As per the said settlement the petitioner was required to be placed in the pay scale of Rs.330-560.

3.4 It is further case of the petitioner that, similarly situated employees like the petitioner who were in the grade of Rs.260-400 were to be absorbed in the scale of 330-560 approached this Court by way of filing Special Civil Application No. 2171 of 1986 and the Division Bench had issued rule and granted ad-interim relief in the said petition. The petitioner therefore made several representations to the respondent Corporation and by reply of the respondent dated 4-2-1991 his request was turned down on the ground that the petitioner was not party to the said Special Civil Application No. 2171 of 1986, therefore similar treatment cannot be given to the petitioner, particularly because no interim order was operating in favour of the petitioner. The petitioner was therefore paid salary as per the award of Shri. G.B. Barot, refusing his claim for salary in the scale of Rs.330-560 as per 2-P settlement.

4.1 Mr. Rawal has further submitted that the petitioner had earlier approached this Court by way of writ petition being Special Civil Application No. 2279 of 1991, where following order was passed :-

" The petitioner is present and on the instructions of the petitioner, learned Counsel for the petitioner submits that the petitioner wants to file representation before the respondent. The petitioner is directed to submit representation within a week and on filing such representation, the respondent shall consider the same on merits and pass appropriate orders on or before 30th June, 1998. Without prejudice to such rights, the petitioner is permitted to

withdraw the petition. The same is disposed of accordingly. Rule is discharged with no order as to costs. "

4.2 It is submitted that thereafter petitioner made a representation and an order came to be passed recommending petitioner's claim, which is at Annexure-E to the petition.

5.1 It is submitted by Mr. Rawal that the petitioner is entitled to the benefit of the resolution passed by the General Body of the then Sardarnagar Municipality on 30-10-1985 whereby the then Municipality has revised the pay scale of the employees of the Municipality w.e.f. 1-11-1985, which was also approved by Executive Committee on 5-12-1985, pursuant to which 2-P settlement was entered into between President of Sardarnagar Municipality and the Employees union and was decided to give the benefit of 2-P settlement to all the employees of the Municipality w.e.f. 2-10-1985.

5.2 Mr. Rawal has submitted that on the date of merger of Municipality in Ahmedabad Municipal Corporation on 23-2-1986 the petitioner was under suspension. Since he was under suspension he could not claim the said benefit under 2-P and, therefore, after his acquittal in the criminal case and his reinstatement in service he approached this Court for redressal of his grievance by way of preferring Special Civil Application No. 2279 of 1991.

6.1 Mr. Munshaw, learned advocate appearing for the respondent Corporation has vehemently opposed the arguments made on behalf of the petitioner, and has raised following contentions.

(a) The first contention raised on behalf of the respondent Corporation was since the petitioner himself has given undertaking on 30-11-1988 he is not entitled to the relief as claimed in the present petition.

(b) The second contention of Mr. Munshaw for the respondent was, apart from above, this Court by judgment & order dated 5-8-1994 in Special Civil Application No. 9909 of 1993 had rejected the claim of the petitioners therein who were similarly situated to the petitioner. Therefore the claim of the petitioner cannot be considered by this Court.

(c) The third contention raised by Mr. Munshaw is, in the affidavit-in-reply filed in the petition, it was

pointed out that originally 13 employees were given benefits of 2-P settlement in view of the resolution. Those 13 employees were directed to give undertaking to withdraw the proceedings.

7.1 I have heard counsel for the parties. The admitted position is that the respondent Corporation has stepped in the shoes of the then Municipality,therefore the resolution which was passed by the General Board and the Executive Committee by which the rights are re-affirmed in favour of the employees. In view of the settled legal position, respondent Corporation can not deprive the petitioner of his legitimate benefits or the rights which are flowing from the resolution passed by the General Body and Executive Committee of the then Municipality under the settlement dated 2-10-1985 under 2-P to all the employees of the Municipality. It is true that on the relevant date the petitioner was under suspension and therefore he has not raised this claim. But in view of the order of this Court in Special Civil Application No. 2279 of 1991 where the Division Bench had directed the respondent to consider the case of the petitioner on merits, they could not have rejected the claim of the petitioner merely on the ground that Special Civil Application No. 9903 of 1993 was dismissed qua the other employees, more particularly in the said judgment in para-3, learned Single Judge has rejected the claim of those petitioners on the ground that they have approached the High Court after 2-P settlement. Whereas in the present case petitioner had earlier approached this Court in 1991 by way of preferring Special Civil Application No. 2279 of 1991.

7.2 The other contention in respect of undertaking given by the petitioner to the respondent Corporation is misconceived in as much as the undertaking is given only for the purpose of refunding by single installment the excess amount, if any, paid by the Corporation by mistake. It is not an undertaking by the petitioner accepting the pay scale as claimed by the respondent Corporation.

7.3 I am not touching the fact of 2-P settlement in view of the apprehension put forward by learned counsel for the respondent Corporation that the same may create rights in favour of other employees. Otherwise from page-31 the clause is very clear that 2-P settlement is available to all employees but since the petitioner was under suspension and was acquitted from criminal case only in 1988, and more particularly in view of the observations made by the Division Bench in Special Civil

Application No. 2279 of 1991, I am considering the prayer of the petitioner which he is otherwise entitled to get for the reasons stated hereinabove.

8.1 Mr. Rawal has strongly relied on the decision of this Court reported in 1999 LAB.I.C. 2152 in case of DIVISIONAL CONTROLLER, GUJARAT STATE ROAD TRANSPORT CORPORATION, AHMEDABAD Vs. GORDHANBHAI SHIVABHAI PATEL, where Division Bench of this Court has held that service conditions can not be changed which is detrimental to the employees and the service conditions which were prevailing prior to the order of taking over or the merger shall prevail. In view of this decision the resolutions which came to be passed by the Municipality is binding to the Ahmedabad Municipal Corporation, more particularly when the Division Bench has directed the Corporation in Special Civil Application No. 2279 of 1991, the Corporation ought to have considered the case of the petitioner on merits and ought to have accepted the claim of the petitioner.

8.2 Mr. Munshaw for the respondent Corporation also contended that the petitioner is not entitled to any additional benefits in view of the fact that he has accepted the benefits which are prevailing in respondent Corporation similar to other employees and is also promoted. In my view this will not change the claim of the petitioner. The petitioner will be entitled only the difference and will not be given any other additional benefits. It is clarified that petitioner's pay will be re-fixed from 23-2-1986, considering the fact that he is entitled to get said benefits which are given to other employees under the resolution of the then Municipality and the same be fixed within a period of four months.

9.1 This petition is accordingly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

Dt: 26-8-2004 (K.S. JHAVERI, J)

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